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Let The Seller Beware: Maryland's Consumer Protection Act

By Dennis Paul Zawacki

(a) The General Assembly of Maryland finds that consumer protection is one of the major issues which confront all levels of government and that there has been mounting concern over the increase of deceptive practices in connection with sales of merchandise and services and the extension of credit. . . .

(3) The General Assembly concludes, therefore, that it should take strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland. It is the purpose of this title to accomplish these ends and thereby maintain the health and welfare of the citizens of the State.

—Maryland Consumer
Protection Act

Ever been handed an automobile repair bill that exceeded your wildest imagination? Ever purchased 100% ground beef but had some serious doubts whether it was really all beef? Ever had a warranty guarantee turn out to be nothing more than an idle promise?

If so, most likely you felt sufficiently outraged at being "ripped off." But you felt powerless to do anything about the situation; given the high fees of attorneys and the total amount involved in the dispute. If unfair, fraudulent, or deceptive business practices have been your experience, fear not! The legislature of the State of Maryland has done something to alleviate the distress of the aggrieved consumer.

The common law doctrine of caveat emptor has once again been limited. By legislative enactment, MD. ANN. CODE art. 83, §19-27A (1967), later recodified in MD. ANN. CODE COM. LAW title 13

(1975), the Consumer Protection Division of the Attorney General's Office was established. The Division was especially designed to advocate for the protection of the consumer. Maryland's Consumer Protection Division is a prime example of how a pro-consumer agency should operate. The Division should serve as an excellent model for other jurisdictions to follow in creating their own consumer protection bureaus.

The legislative purpose behind Maryland's Consumer Protection Act was to set certain minimum statewide standards for the protection of the consumer. This step was necessitated by testimony at public legislative hearings establishing widespread deceptive consumer practices by businesses. To these ends, the legislature created the Division of Consumer Protection within the office of the Attorney General.

The Division has been in operation since 1967 and presently is composed of 31 full-time employees plus several part time and volunteer workers, with an operating budget of \$494,649.00. The Division's main office is in Baltimore, with branch offices in Towson, Salisbury, Hagerstown and College Park. If present events indicate future trends (hundreds of consumer complaints were mediated last year while 84 legal actions were filed) then the Division can expect to be kept very busy as public awareness of its activities grows. So consumers, worry not. You can finally do something to protect yourself.

THE CONSUMER'S REMEDIES

An aggrieved consumer can simply telephone in a complaint to a Division of-

fice, send a complaint letter, or casually drop by a division office to fill out a complaint form. Upon receiving a consumer complaint, an investigator is assigned the problem and attempts to obtain a remedy for the consumer. This consumer affairs specialist offers information and advice to the consumer. Often the consumer affairs specialist will contact the merchant involved and attempt to reach an equitable settlement. If necessary, the parties involved will be called into a division office for mediation purposes. If mediation should fail, the Division is empowered by the General Assembly to provide an arbitration hearing. Prior to submitting to this hearing, the adverse parties agree to be bound by the decision of the arbitrator. These proceedings and procedures are without cost to either party.

The Division tallies consumer complaints to see if a consistent pattern of complaints exists. If such a pattern is discovered, the Division has reason to believe a widespread anti-consumer practice exists. Most likely, the Attorney General will institute litigation to halt the practice. The Attorney General may also request that the merchant involved refund any purchase price paid and/or pay a stipulated fine.

The Division retains year end statistics on the categories of complaints filed in their offices. According to the Attorney General's annual report, percentage figures for the first half of 1976 show the number one consumer complaint to be automobile related—23%; followed by: appliances—16%; mail order and mail services—11%; television and radios—9%; home improvements—5%; credit—4%; debt collection—3%; and advertising—3%. The Division also retains a list of business establishments found to have violated certain consumer protection laws.

Action by the Consumer Protection Division resulted in a discontinuance of many anti-consumer practices. However, the Attorney General's attack on anti-consumer practices is not limited to simply correcting prior injustices. Public awareness is an important aspect of the Attorney General's pro-consumer campaign.

THE EDUCATION OF THE CONSUMER

The Attorney General is empowered by the Consumer Protection Act to recommend legislation to the General Assembly to protect the public from fraudulent promoters and the schemes they propose. In addition, the Attorney General is permitted to utilize the allocated funds of the Division in order to employ the media to fully acquaint the consuming public and the business community about the provisions of the Act. The Attorney General may also utilize other means to educate the public about the nefarious schemes that might be foisted upon them.

Part of the Division's purpose is to disseminate information to the public in order to acquaint the consumer with his available remedies and to assist the consumer in preventing the development of consumer problems. The Division publishes books and pamphlets, issues radio announcements relating to the services offered by the division and informs the consumer of new laws and regulations. The most popular Division booklet, "Don't Get Ripped Off", is in its third printing and still commands a substantial demand. The Women's Law Center has cooperated with the Division in producing a booklet on "The Legal Rights of Women in Credit in Maryland" in response to consumer complaints in this area. A publication explaining the new Automobile Repair Facilities Law is now in the hands of over 100,000 consumers. In addition, the Division provides, upon request, a consumer education specialist who will explain the workings of the Division and the meaning of certain consumer laws to school groups, businesses, and other citizen groups. Finally, a series of 90 second radio broadcasts called "Maryland Consumer Alert" informs the consumer of new laws, regulations, and the services of the Division.

Thus, the Division not only engages in the mediation and litigation of disputes but also has adopted a preventive law approach. A consumer or business person who is cognizant of his rights is in a better position to see that they are protected. An informed consumer is an aware one. As a result of this enlightenment, both the

business community and the public should benefit in a consumer oriented society. Honest business practices assist in developing good business relations. Both consumers and the business community benefit from such relations.

THE DEVINE SEAFOOD CASE AND BEYOND

On October 11, 1977 the Court of Special Appeals of Maryland handed down a strong pro-consumer decision. The Court of Special Appeals upheld a Baltimore City Circuit Court judge's injunction and assessment of \$38,500 in civil penalties against a Lexington Market merchant.

The defendant, Devine Seafood, Inc., operated a retail fish market. It was alleged by the Attorney General that Devine Seafood had engaged in a deliberate scheme to defraud the consuming public by a systematic pattern of overcharging by a price per pound 10¢ higher than the price indicated on the price markers. After reviewing the testimony of certain employees given in the lower court, the Court of Special Appeals held there was sufficient evidence to establish a scheme to defraud the public. And the fact that the Attorney General did not attempt a settlement prior to filing suit, would not serve as a jurisdictional bar to the action.

Thus, *Attorney General v. Devine Seafoods, Inc.* established the precedent that the Attorney General need not ask the merchant to "sin no more" before instituting legal proceedings. The Division may move on its own initiative and report suspected violations to the Attorney General for legal action; especially where such practices involved willful wrongdoing by a merchant.

The *Devine Seafoods* case was but one of several legal actions commenced by the Attorney General on behalf of the

consuming public. Other cases resulted in these additional consumer remedies: the removal from sale in Maryland of a purported but ineffective gas saving device; an assurance of discontinuance by several food retailers who included unlawful amounts of fat or pork or poultry additives in their ground beef; an assurance of discontinuance was also secured to prohibit unfair or deceptive practices in the advertising of musical instruments; and an assurance of discontinuance was obtained against a collection agency which had falsely advised debtors of legal action which had not yet been undertaken. These are but a few examples of the results of 84 legal actions commenced by the Attorney General in 1976 on behalf of the consuming public. The consumer battle continues.

The issue of consumer protection has once again reached the federal level. A proposal now before Congress would create a national consumer protection agency. The purpose behind such legislation is to create an independent agency to represent the viewpoints of consumers before other federal regulatory agencies. The estimated cost of this consumer agency is only 15 million dollars or approximately 5 cents per citizen. Presently, input from consumers into the decisions of federal regulatory agencies has been limited. Powerful corporate lobbyists have dominated public testimony before these agencies. Since these agencies largely base their findings on evidence presented in the hearing records, an agency to vocalize the viewpoints of the consuming public would seem a necessity.

However, lobbying efforts by businesses have been intense. The prospects for congressional passage of such legislation appear unlikely even though the A.B.A. supports a Consumer Protection Act. American consumers will be left with only limited recourse against our bureaucratic agencies. The consumer still has the option of countering anti-consumer forces on the state level. Maryland's Consumer Protection Division of the Attorney General's Office is in the forefront of those states who are attempting to resolve consumer controversies equitably. Hopefully, this concept will soon be adopted on the federal level.



photo by John Clark Mayden